

REMARKS

Claims 1 and 3-8 are pending in this application. By this Amendment, claims 1 and 4-8 are amended. The amendments introduce no new matter because they are made (1) to clarify the subject matter of the pending claims, or (2) are supported by the claims, as originally filed. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Applicants appreciate the courtesies extended to Applicants' representative by Examiner Rao in the February 27 personal interview. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

The Office Action, in paragraph 3, rejects claim 8 under 35 U.S.C. §101 asserting that the claim is directed to non-statutory subject matter. This rejection is respectfully traversed. Claim 8 is amended to obviate the rejection. Accordingly, reconsideration and withdrawal of the rejection of claim 8 under 35 U.S.C. §101 are respectfully requested.

The Office Action, in paragraph 5, rejects claims 1 and 7 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,084,663 to Seng. Applicants understand this rejection to also include claims 3-6 based on the specific rejections enumerated on page 4 of the Office Action. This rejection is respectfully traversed. The amendment of independent claims 1 and 7 to incorporate subject matter previously recited in now-canceled claim 2, which was not rejected under 35 U.S.C. §102(b) as being anticipated by Seng, renders this rejection moot.

Accordingly, reconsideration and withdrawal of the rejection of claims 1 and 3-7 under 35 U.S.C. §102(b) as being anticipated by Seng are respectfully requested.

The Office Action, in paragraphs 7 and 8, rejects claims 2 and 8 under 35 U.S.C. §103(a) as being unpatentable over Seng in view of U.S. Patent No. 4,920,273 to Sacks et al. (hereinafter "Sacks"). The rejection of the subject matter of now-canceled claim 2, to the

extent that that subject matter is incorporated into independent claims 1, 7 and 8, and the rejection of claim 8 are respectfully traversed.

In rejecting claim 2, the Office Action indicates that Seng fails to disclose inputting at least one second parameter required for measurement in a Z-axis direction as positively recited, among other features, in claim 2. Rather, the Office Action relies on Sacks as overcoming this shortfall in the application in Seng to the subject matter of the pending claims. The analysis of the Office Action fails for at least the following reasons.

Sacks teaches an in-process method for measuring deviations in a surface in a Z-direction. With reference to col. 1, lines 21-26, Sacks teaches that the disclosed invention is a system which is capable of accurately and precisely detecting the location in the Z-axis direction and measuring its position in real time, and without the necessity of any physical contact between the measurement system and the surface of the object being detected. The Office Action, with varying references to the Sacks disclosure, indicates that Sacks is alleged to disclose a measuring method for accurately measuring object surface gradations (col. 8, lines 50-65) along the Z-axis (col. 9, lines 25-45) using z-axis position parameters (col. 10, lines 25-62) in order to automatically determine the Z-axis position of an object surface very accurately, and relatively independent of surface features and over a wide range of surface reflectivities (col. 12, lines 3-7). To the extent that Sacks may teach features that can reasonably be considered to correspond to those that the Office Action's interpretation attributes to the reference, a conclusion which Applicants do not concede such a teaching of Sacks would, in any respect, fail to suggest that the reference can reasonably be considered to have suggested "creating a measurement path" based on any second input parameter measurement along a Z-axis.

For at least this reason, Sacks cannot reasonably be interpreted in any manner that would overcome the conceded shortfall in the application of Seng to the subject matter of the

pending claims. In other words, any permissible combination of Sacks with Seng cannot reasonably be considered to have suggested the combinations of all of the features positively recited in independent claims 1, 7 and 8. Further, claims 3-6 also would not have been suggested by the asserted combination of applied references for at least the respective dependence of these claims, directly or indirectly, on an allowable base claim, as well as for the separately patentable subject matter that each of these claims recites.

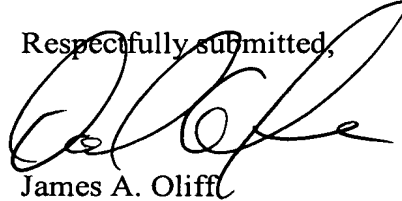
Applicants' representative presented the above arguments to Examiner Rao during the February 27 personal interview. Examiner Rao indicated that he agreed that the references, while they may show the ability to take measurements along the Z-axis direction, fail to address any feature that can reasonably be considered to correspond to "creating a measurement path..." based on a second input parameter for measurement along the z-axis.

Accordingly, reconsideration and withdrawal of the rejection of the pending claims as being suggested by the asserted combination of Seng and Sacks are respectfully requested.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1 and 3-8 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Daniel A. Tanner, III
Registration No. 54,734

JAO:DAT/clf

Date: March 10, 2008

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--